BEFORE THE

Federal Communications Commission

WASHINGTON, D. C.

In the Matter of	)	
	)	
Implementation of Sections of	)	
the Cable Television Consumer	)	MM Docket No. 92-266
Protection and Competition Act	)	
of 1992	)	
	)	
Rate Regulation	)	

COMMENTS OF HARRON COMMUNICATIONS CORPORATION

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SUMMARY

Harron Communications Corporation's Comments are based on its perspective as a cable operator serving multiple franchise jurisdiction cable systems. Harron's position is that the Commission's proposal to allow cable operators to list itemized expenses "as part of the total bill" but not "separately bill" for each itemized expense is contrary to the plain language of Section 622(c) of the 1992 Cable Act, Congressional intent as expressed in the Conference Report, and sound public policy regarding subscriber billing.

The plain meaning of Section 622(c) unambiguously permits separate billing charges for franchise fees, PEG expenses imposed by a franchise agreement, and "any other" government imposed charges "on the transaction between the operator and the subscriber." Because the language of Section 622(c) is clear, the House Report on which the Commission relied in the NPRM is not relevant to the Commission's mandate to enforce Congressional intent as expressed by the plain meaning of the Act. Furthermore, the Conference Report adopts the Senate provision of Section 622(c), not the House provision. Both the Conference Report and the Senate report are wholly consistent with the plain meaning of Section 622(c).

The plain meaning also preempts inconsistent local and state regulations prohibiting line item billing, by leaving it to the individual cable operator's discretion whether to "identify . . . as a separate line item" government imposed expenses. Chapter 6 of the Cable Communications Policy Act of 1984 continues to provide for preemption of inconsistent state or local regulations. Because Congress did not include a non-preemption statement under Section 622(c), the legislature did not leave room for contrary local laws or regulations.

Moreover, itemization of charges on the subscriber's bill allows equitable and uniform billing practices. Line item billing enables cable operators to charge the same rates for basic and tiered service throughout the same system, yet at the same time charge subscribers in each franchising jurisdiction only those government imposed assessments attributable to their particular jurisdiction. Harron also urges the Commission to recognize explicitly that copyright fees fit within Section 622(c)(3)'s definition of "an assessment or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber."

Because the 1992 Cable Act both requires uniform rates and allows discrimination in rate levels to benefit senior citizens Harron agrees with the Commission that the Act allows

different "rate levels among different categories of customers provided that the rate structure . . . is uniform throughout a cable system's geographic area." Thus in franchise areas requiring senior citizen discounts, the Act permits that senior subscribers receive one uniform rate while non-senior subscribers receive another, slightly higher, uniform rate in order to subsidize the senior discount.

Finally, Harron requests that the Commission's regulations allow reasonable recovery of costs for tiered service and provide adequate procedures for determining reasonable prices. To do so, the Commission must be the authority that determines when effective competition exists in a community, must utilize benchmarks based on inclusive services, and must define "geographic area" under Section 623(d) of the 1992 Cable Act to mean "franchise area."

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On behalf of Harron Communications Corporation ("Harron"), we submit the following Comments in response to the Notice of Proposed Rulemaking in the captioned proceeding (the "NPRM").

Harron operates cable systems in approximately 200 communities in seven states, serving over 223,000 subscribers. Many of Harron's cable systems cover more than one franchising jurisdiction ("franchise area"). The Comments that follow are based on Harron's perspective as an operator serving multiple franchise area systems.

As part of its billing practice, Harron separately itemizes franchise fees, copyright fees, and other government imposed taxes and assessments, which may vary by franchising jurisdiction. By itemizing such expenses on the bill separate

from the cable service rate, Harron is able both to charge a uniform rate for service within a system and to charge a subscriber for only those government imposed costs attributable to the subscriber's particular franchise area. This enables subscribers in franchising jurisdictions with lower government imposed fees and expenses to avoid paying the higher government imposed costs of another jurisdiction within the same system. In some franchise jurisdictions, Harron is required to provide a senior citizen discount. In these areas, Harron generally charges non-senior subscribers a slightly higher uniform rate in order to subsidize the senior discount.

I. SECTION 622(c) OF THE COMMUNICATIONS ACT AS AMENDED EXPLICITLY PERMITS LINE ITEM BILLING FOR GOVERNMENT IMPOSED CHARGES AND PREEMPTS INCONSISTENT STATE AND LOCAL REGULATIONS.

In its NPRM at 78-79, the Commission discusses the subscriber bill itemization provisions of Section 622(c) of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 (the "1992 Cable Act"). The Commission proposes to follow the House Report on the 1992 Cable Act, which suggests that, although itemized expenses may be listed "as part of the total bill," such costs may not be "separately billed." NPRM at 79; see H.R. Rep. No. 102-628, 102d Cong., 2d Sess. at 86 (1992). Harron's position is that

the Commission's proposal would be contrary to the plain language of the Cable Act, the intent of the Conference Report, and sound public policy regarding subscriber billing.

A. The Plain Meaning of Section 622(c) Permits Separate Line Item Billing for Government Imposed Expenses.

The plain meaning of the 1992 Cable Act permits cable operators, at their discretion, to itemize as a separate amount on the subscriber bill franchise fees, PEG costs imposed by a franchise agreement, and any other fees or assessments imposed by any government authority on cable service to the subscriber. Specifically, the Cable Act amends Section 622(c) of the Communications Act to read:

> (c) Each cable operator may identify, consistent with the regulations prescribed by the Commission pursuant to section 623, as a separate line item on each regular bill of each subscriber, each of the following:
>
> (1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.
>
> (2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels.

> (3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber.

(Emphasis added.) 1/

The plain meaning of the Act permits cable operators to list "as a separate line item" each government imposed charge as an "amount of the total bill." The Act thus unambiguously permits separate billing charges for franchise fees, PEG expenses imposed by a franchise agreement, and "any other" government imposed charges "on the transaction between the operator and the subscriber." Harron believes that the Commission's proposal not to allow separate line item billing is directly contrary to the plain meaning of the Act. Furthermore, because the language of Section 622(c) is clear, the House Report on which the Commission relied in the NPRM is not relevant to the Commission's mandate to enforce

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1/ Section 14 of the 1992 Cable Act revises and adds to the language formerly contained in Section 622(f) of the Cable Communications Policy Act of 1984. The 1984 Act permitted cable operators to "designate that portion of a subscriber's bill attributable to the franchise fees as a separate item on the bill." Pub. L. 98-549, § 622(f). The 1992 Act makes more explicit the permissibility of line itemization and includes additional government imposed charges that may be itemized.

Congressional intent as expressed by the plain meaning of the Act.

B. The Conference Report for the 1992 Cable Act is Consistent with Plain Meaning Permitting Line Item Billing.

Even considering the legislative history of the Cable Act, Congressional intent is consistent with the plain meaning of Section 622(c) permitting line item billing. The Commission's proposed interpretation of Section 622(c) is based on the House Report at 86. See NPRM at 79. The House Report, however, does not express "Congressional intent" regarding Section 622(c). That intent is best expressed by the later-in-time Conference Report. See Conf. Rep. No. 102-862, 102d Cong., 2d Sess. at 84 (1992). In fact, rather than adopting the House version, "[t]he Conference Agreement adopts the Senate provision with [one] amendment." Id. (emphasis added). Neither the Conference Report nor the Senate Report on the Cable Act adopts the strained interpretation of Section 622(c) found in the House Report. See id.; S. Rep. No. 102-92, 102d Cong., 1st Sess. (1991). Thus, both the Conference Report and the Senate Report are wholly consistent with the plain meaning of the language of Section 622(c).

C. Section 622(c) Preempts Inconsistent State and Local Regulations Prohibiting Line Item Billing.

Harron requests the Commission to consider that some local and state jurisdictions may have billing regulations inconsistent with the new federal law. Section 622(c) of the Cable Act, states that "[e]ach cable operator may identify . . . as a separate line item" government imposed fees on the transaction between the operator and subscriber. The Act thus leaves it to each cable operator's individual discretion whether to itemize separate charges on the subscriber's bill.

Indeed, the entire purpose of this provision is to leave these matters to the discretion of the cable operator in the face of contrary instructions from a state or franchising authority. In the absence of a properly promulgated requirement to the contrary, of course, a cable operator may organize its bills entirely as it sees fit. It is only when bill itemization is otherwise limited that Section 622(c) has any applicability.

It is therefore evident that Congress intended this provision to preempt inconsistent state regulations not allowing such itemization. Chapter 6 of the Communications Act continues to provide for preemption of inconsistent state or local regulations. "Any provision of the law of any

state . . . which is inconsistent with this chapter shall be deemed to be preempted and superseded." 47 U.S.C. § 556(c). Moreover, in other sections of the 1992 Cable Act, Congress explicitly preserved local authority to establish and enforce laws or regulations that are more stringent than those to be established by federal regulators. See, e.g., Section 632 of the 1992 Cable Act, 47 U.S.C. § 552. Had Congress meant to allow local authorities to prohibit subscriber bill itemization, it would have included a similar non-preemption statement. The conspicuous absence of such language underscores that Congress did not leave room for contrary local laws or regulations. In the absence of some properly adopted, consistent billing restriction at the state or local level, Section 622(c) gives cable operators complete discretion regarding how best to itemize their bills.

D. Line Item Billing Allows Equitable and Uniform Billing Practices.

Section 623(d) of the Communications Act, as amended by the 1992 Cable Act, requires a cable operator to "have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system." As noted at pages 13-14, infra, Harron does not agree with the Commission's suggestion that Section 623(d) requires that rates be uniform among

different franchises covered by a single cable systems. See NPRM at 56. But however the Commission ultimately resolves that issue, itemization of charges on the subscriber's bill enables cable operators to charge the same rates for basic and tiered service throughout the same system, yet at the same time charge subscribers in each franchising jurisdiction only those government imposed taxes, copyright costs, and other assessments attributable to their particular jurisdiction. Prohibiting line item billing would lead to inequitable results in cable systems covering more than one franchising area.

Franchise fees, PEG expenses, copyright fees, and other government charges often vary among different franchise areas of a system. In some communities in Massachusetts, for example, Harron has monthly PEG costs per subscriber of approximately $.75. In other Massachusetts communities, monthly PEG costs are approximately $1.50 per subscriber. Franchise fees also vary widely among Harron's different franchise areas. And Harron's copyright fees in New Hampshire vary between 2.582 percent and 1.456 percent for franchise areas that are part of the same system. It thus would be unfair not to permit subscribers' bills to vary between franchise areas based on significant differences in these charges. In the absence of itemization, cable operators either would have to charge subscribers in one franchise jurisdiction

for franchise fees and costs only applicable to a different jurisdiction, or would have to have different rates for service in different jurisdictions of the same system. The first alternative is inequitable; subscribers in franchising areas with lower government imposed charges would be forced to subsidize subscribers in franchise areas with higher government imposed charges. The second alternative is not only contrary to the Commission's proposal regarding uniform rates, but it could cause confusion and dissatisfaction among the subscribers in the different jurisdictions.

E. Section 622(c) Permits Line Item Billing of Copyright Fees.

Pursuant to the Commission's call for comments on "any other regulations that may be necessary to adequately implement" Section 622(c), NPRM at 79, Harron urges the Commission to recognize explicitly that copyright fees fit squarely within the Act's definition of "an assessment or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber." Section 622(c)(3). One of the governmental authorities with responsibility over Harron's operations has suggested that copyright fees may not be itemized.

There can be little doubt that copyright fees are "imposed by [a] governmental authority on the transaction

between the operator and the subscriber." The copyright fees are imposed by Congress and the Copyright Royalty Tribunal. Sections 111(c) and (d) of the Copyright Act of 1976, 17 U.S.C. §§ 111(c) and (d), give cable operators a compulsory copyright license only when the appropriate payment is made to the Copyright Office. The amount of the copyright fee is a percentage of the cable operator's gross receipts from the transaction with the subscriber -- the provision of cable service, including the compulsory carriage of commercial television stations' signals.

Because copyright fees are "an assessment or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber," pursuant to Section 622(c) cable operators should be permitted to itemize such fees as a separate charge on the subscriber's bill.

II. BY PERMITTING SENIOR DISCOUNTS AND REQUIRING UNIFORM RATES, THE 1992 CABLE ACT ALLOWS SENIORS TO BE CHARGED ONE UNIFORM RATE AND NON-SENIORS TO BE CHARGED ANOTHER UNIFORM RATE.

The 1992 Cable Act both requires uniform rates for service in a "geographic area" and allows "reasonable discriminations in rate levels" for the benefit of "senior citizens or other economically disadvantaged groups." NPRM at 56. Harron agrees with the Commission's conclusion that, to

reconcile these two provisions, the Commission must allow different "rate levels among different categories of customers provided that the rate structure . . . is uniform throughout a cable system's geographic area." Id.

Harron is currently required by franchise agreement to provide senior citizen discounts in a few jurisdictions. By lowering the price of basic service for senior citizens within a franchise area, Harron must increase the price of basic service for non-seniors in order to subsidize the senior discount. In these franchise areas, senior subscribers receive one uniform rate for basic service while non-senior subscribers receive another uniform rate. Harron requests the Commission to clarify that such a uniform dual rate structure complies with the Act.

III. THE COMMISSION'S REGULATIONS MUST ALLOW REASONABLE RECOVERY OF COSTS FOR TIERED SERVICE AND PROVIDE ADEQUATE PROCEDURES FOR DETERMINING REASONABLE PRICES.

In most respects, at the comment stage of this proceeding Harron is willing to rely on the Comments of other industry representatives regarding general issues of rate regulation. Harron has special concerns, however, in a few specific areas.

- The FCC must be the authority that determines when effective competition exists in a community. Although Harron does not oppose allowing a franchising community to make that determination initially, the Commission must provide for expedited procedures for resolution of disputes.
- Harron agrees with the Commission that benchmarks should be used to determine whether prices for basic or tiered services are reasonable in the first instance. The benchmarks should be created by a series of matrixes, with systems grouped in reasonable categories, and prices compared on a per-channel basis. In considering the reasonable prices for tiered services, the Commission should include the prices of equipment (especially remotes and additional outlets), and basic service, as well as the price of the tier. As a result of the Commission's regulations, the price of basic service for some operators may require adjustment. In addition, the prices for remotes and additional outlets -- which have subsidized basic and tiered services in many systems -- may have to be adjusted. The price of tiered

service, therefore, may also have to be adjusted to reflect these other changes. Harron believes that Congress was concerned that the prices for basic service be affordable and that the prices of equipment be reduced close to cost. But to meet constitutional standards, as well as to permit the continued growth and viability of the industry, tiered service must be permitted to recover sufficient revenue for cable operators to be able to attract capital and meet their loan covenants. Especially because equipment prices have often subsidized other services, the benchmark for tiered services must be set on the basis of inclusive services. Although the prices of basic and equipment rental may be unbundled for the subscriber to decide what level of service he or she wants, the benchmark for tiered service should include these charges. Only tiered service in excess of the benchmark (when the charges for the other services are included) should be considered unreasonable.

- Prices should be required to be "uniform" only within the same franchise area. Although Section 623(d) of the 1992 Cable Act requires a "uniform"

rate structure "through the geographic area in which cable service is provided over the cable system," the term "geographic area" is not defined. The legislative history indicates that Congress intended only that rates be uniform within a "franchise area." See S. Rep. No. 102-92, 102d Cong., 1st Sess. 76 (1992).

IV. CONCLUSION.

Harron urges the Commission to follow the plain meaning of Section 622(c) of the 1992 Cable Act and permit line item billing of franchise fees, copyright fees, and other government imposed costs. By adhering to the plain language, the Commission will enable cable operators to maintain equitable and uniform billing practices for subscribers in the same system but different franchising jurisdictions. Harron also requests the Commission clarify that a uniform dual rate structure in order to provide a franchise-required senior discount on basic service is consistent with the Act. Finally, Harron requests that the Commission establish benchmarks for tiered service that consider the prices of underlying services,

and recognize that the Act's requirement for rate uniformity applies only by franchise area.

Respectfully submitted,

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